

BEFORE THE
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ALVIN VICTOR PRASAD
154 Bonny Street
Mountain View, CA 94043

Respondent.

Case No. 7-2002

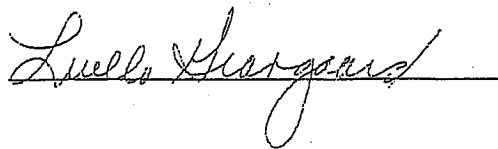
OAH No. N2003060633

DECISION

The attached Proposed Decision of the Administrative Law Judge is
hereby adopted by the Department of Consumer Affairs as its Decision in the above-
entitled matter.

This Decision shall become effective on April 4, 2004

IT IS SO ORDERED March 5, 2004



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PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on December 11, 2003.

Char Sachson, Deputy Attorney General, represented complainant Gretchen L. Kiose, Executive Officer, California Board of Occupational Therapy.

Omar Krashna, Esq., 1407 Webster Street, Suite 203, Oakland, California, 94612, represented respondent Alvin Victor Prasad who was present.

The matter was submitted on December 11, 2003.

FACTUAL FINDINGS

1. Complainant Gretchen L. Kiose filed the statement of issues in her official capacity as Executive Officer of the California Board of Occupational Therapy (Board), Department of Consumer Affairs, State of California.
2. On or about December 28, 2002, the Board received an application for an Occupational Therapist license from respondent Alvin Victor Prasad. The Board denied the application on January 28, 2003.
3. On or about January 22, 1993, in Case No. B9205900, respondent was convicted in the Municipal Court of California, Santa Clara County Judicial District, on his plea of nolo contendere to a violation of Penal Code section 314.1, lewd or obscene conduct, a misdemeanor. Respondent stipulates that the offense is substantially related to the qualifications, functions or duties of an occupational therapist.

Imposition of sentence was suspended and respondent was placed on formal probation for two years. Respondent was ordered to complete fifteen days in county jail, which he was permitted to serve doing weekend work, pay fines and fees of \$290, and to participate in a therapeutic program as directed by the probation officer. Respondent was ordered to register as a sex offender pursuant to Penal Code section 290.

4. The facts and circumstances of the offense were as follows: On September 9, 1992, respondent exposed himself and masturbated in a neighborhood public park. While it was not established by competent evidence that respondent did so in front of "others," it was established that his act was witnessed by a city maintenance employee.

Respondent was 25 years old at the time of the offense. Respondent was attending college during the day, working at night, raising a daughter and living under stress and confusion about his gender and sexuality. Respondent understands that his conduct was intended as an "escape" and that it was "wrong."

5. Respondent complied with the terms and conditions of his probation. On March 28, 1995, the court granted respondent's petition to set aside the conviction pursuant to Penal Code section 1203.4.

6. On or about November 18, 1999, in Case No. B9945979, respondent was convicted in the Superior Court of California, County of Santa Clara, on his plea of nolo contendere to violating Penal Code section 290, subdivision (g)(1), failing to register as a sex offender, a misdemeanor. Respondent stipulates that the offense is substantially related to the qualifications, functions or duties of an occupational therapist.

Imposition of sentence was suspended and respondent was placed on court probation for three years. Respondent was ordered to serve 15 days in county jail, which he was permitted to complete doing weekend work. Respondent was ordered to register as a sex offender pursuant to Penal Code section 290.

7. The facts and circumstances of the offense were that respondent did not register as a sex offender as required by his conviction of violating Penal Code section 314.1. Respondent did not register as a sexual offender because he understood that he was not required to do so if his conviction was expunged. That does not explain, however, why respondent did not register as a sex offender prior to his 1995 petition to set aside the conviction.

8. Respondent complied with all the terms and conditions of his probation. His petition to set aside the conviction pursuant to Penal Code section 1203.4 was granted in 2003.

9. On October 21, 2003, respondent was granted a certificate of rehabilitation for his conviction of violating Penal Code section 314.1. (See Pen. Code, § 4852.14.) In so doing the court found and adjudged that respondent had been rehabilitated and was fit to

exercise all the civil and political rights of citizenship (except as provided in Penal Code section 4852.15), and recommended to the Governor that respondent be granted a full pardon.

10. Respondent has demonstrated a sincere commitment to individual therapy and to support groups focusing on sexual identity.

From 1999 to 2001, respondent participated in individual therapy with Edward Brackenbury, Ph.D. From May of 2001 to the present respondent has participated in individual therapy twice a week with Linda Skerbec, MA, LMFT, who specializes in sexual therapy. The sessions focus on gender identity and gender confusion.

From 1999 to the present respondent has participated in a program called Exodus International, a group for people who struggle with sexual identity. The group meets weekly for two and one-half hours.

From December of 2002 through May of 2003, respondent participated in a weekly group therapy program called Living Waters. The group focuses on sexual and relationship issues. The group met weekly for three hours.

11. Prior to licensure respondent worked as a Staff Occupational Therapist for the following organizations: the Veterans Administration (1994 to 1997); the Nursing Inn of Menlo Park (1997-1998); the San Bruno Skilled Nursing Facility and the Brookside Skilled Nursing Hospital (August 2002 to February 2003). At the San Bruno Skilled Nursing Facility respondent held a supervisory position for both physical therapists and speech therapist. At Brookside, respondent held the position of Program Coordinator. A 90-day performance appraisal of respondent dated November 15, 2002, listed below expectation performance in documentation only. His employment in the facilities was terminated when he failed to obtain licensure from the Board.

12. There is no evidence that respondent engaged in sexual misconduct of any kind while at work.

13. Respondent is 36 years old. He has been married for 14 years and has two daughters, ages 12 and 7. Respondent is a committed father and husband. Respondent regularly attends church at Woodside Road Methodist Church. Reverend Lilia B. Lopez-Rahman is the pastor of respondent's church. She attests that respondent is a good father, a good husband, and a kind and pleasant person who is competent and consistent with the responsibilities assigned to him through the church.

14. Respondent is not currently employed.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 480 subdivisions (a)(1) & (c), the Board may deny a license if the applicant has been convicted of crime which is substantially related to the qualifications, functions, or duties of the licensed activity.

Under Business and Professions Code section 480, subdivision (a)(3) the Board may deny a license if the applicant has done an act which if done by a licensee would be grounds for suspension or revocation of the license. Under Business and Professions Code section 490, a board may suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed profession.

Under Business and Professions Code section 2570.28, subdivision (e), the Board may deny a license if the applicant has been convicted of a crime or any offense substantially related to the qualifications, functions, or duties of the licensed activity.

Under Business and Professions Code section 2570.28, subdivision (i), the Board may deny an application for licensure if the applicant has committed any act punishable as a sexually related crime, if the act is substantially related to the qualifications, functions, or duties of a licensee.

2. Cause exists to deny respondent's application for licensure under Business and Professions Code section 480 subdivisions (a)(1) and (a)(3), and Business and Professions Code section 2570.28, subdivisions (e) and (i), by reason of respondent's conviction of a sexual offense that is substantially related to the qualifications, functions, and duties of an occupational therapist as set forth in Factual Finding 3.

3. Cause exists to deny respondent's application for licensure under Business and Professions Code section 480 subdivisions (a)(1) and (a)(3), and Business and Professions Code section 2570.28, subdivisions (e) and (i), by reason of respondent's conviction of a sexual offense that is substantially related to the qualifications, functions, and duties of an occupational therapist as set forth in Factual Finding 5.

4. Respondent has sustained his burden of demonstrating sufficient rehabilitation so that it would not be contrary to the public interest to permit him to obtain a license on a probationary basis. Respondent complied with the terms of both of his court ordered probations and obtained orders setting aside the convictions. Respondent went the extra step to obtain a certificate of rehabilitation. While the Board has reason to be concerned by the circumstances of respondent's lewd conduct conviction, respondent has engaged in significant and conscientious therapies to address the underlying cause of the behavior. There is no evidence that the behavior has been repeated or that conduct of a sexual nature has occurred in the workplace. Respondent's family has remained in tact and is supportive of him. Through his therapies, his family, and his church, respondent has built a foundation of support to keep him from repeating the misconduct. He has demonstrated for ten years

that his support structure is working. The public safety will be adequately protected by allowing respondent to obtain an occupational therapist license on a probationary basis with the requirement that he continue to engage in individual therapy during a five year period of probation.

ORDER

The application of respondent Alvin Victor Prasad for licensure is hereby granted. Upon successful completion of all licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of five (5) years on the following conditions:

1. Obey All Laws: Respondent shall obey all federal, state and local laws and regulations governing the practice of occupational therapy in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Board within five days of occurrence.
2. Compliance with Probation and Quarterly Reporting: Respondent shall fully comply with the terms and conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation. Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained from the Board.
3. Personal Appearances: Upon reasonable notice by the Board, respondent shall report to and make personal appearances at times and locations as the Board may direct.
4. Notification of Address and Telephone Number Change(s): Respondent shall notify the Board, in writing, within five days of a change of residence or mailing address, of his/her new address and any change in work and/or home telephone numbers.
5. Tolling for Out-of-State Practice, Residence or In-State Non-Practice: In the event respondent should leave California to reside or to practice outside the State for more than 30 days, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until respondent

resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California.

6. Notification to Employer(s): When currently employed or applying for employment in any capacity in any health care profession Respondent shall notify his employer of the probationary status of respondent's license. This notification to the current employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. This notification shall be made by providing the employer or prospective employer with a copy of the Board's Statement of Issues and Disciplinary Decision.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five days of any change in employment status. Respondent shall notify the Board, in writing, within five days if he is terminated from any occupational therapy or health care related employment with a full explanation of the circumstances surrounding the termination.

7. Employment Requirements and Limitations: During probation, respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a registry or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

8. Supervision Requirements: Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the

respondent while employed as an occupational therapist or occupational therapy assistant.

Respondent shall not function as a supervisor during the period of probation except as approved, in writing, by the Board.

9. Continuing Education Requirements: Respondent shall complete continuing education directly relevant to the violation as specified by the Board. Continuing education shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Continuing education shall be in addition to the professional development activities required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of the assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Failure to satisfactorily complete the required continuing education as scheduled or failure to complete same no later than 100 days prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such continuing education. Upon successful completion of the course(s), respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

10. Maintenance of Valid License: Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

11. Psychotherapy: Within sixty (60) days of the effective date of the Decision, respondent shall submit to the Board the name of one or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional approved by the Board. Upon approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless

otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid by respondent.

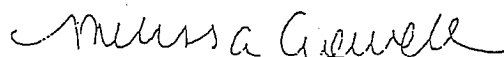
Respondent shall cause the therapist to submit to the Board a written report concerning respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within ninety (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment and to provide such other information as may be required by the Board.

If the therapist finds that respondent is not fit to practice safely, or can only practice with restrictions, the therapist shall notify the Board, in writing, within five working days. The Board shall notify respondent in writing of the therapist's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance with this condition in the manner required by the Board.

12. Violation of Probation: If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. Completion of Probation: Upon successful completion of probation, respondent's license will be fully restored.

DATED: February 3, 2004



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings